

UNITED STATES
BANKRUPTCY APPELLATE PANEL
for the Eighth Circuit

The U.S. Bankruptcy Appellate Panel for the Eighth Circuit is in the processing of revising their local rules. The Panel hereby invites comments on the proposed rules from the public. A summary of revisions, along with the proposed rules, follows.

Comments should be submitted no later than August 11, 2000 to:

Ms. Cindy Harrison, Panel Coordinator
U.S. Bankruptcy Appellate Panel for the Eighth Circuit
1114 Market Street, Room 511
St. Louis, MO 63101

Summary of Changes to Local Rules of the Bankruptcy Appellate Panel

Rule 8001A:

- A. The first sentence of Rule 8001A(a) was delete, as it was repetitious of the Federal Rules of Bankruptcy Procedure. The second sentence was modified to indicate appellant must file a separate election to go to the District Court.
- B. Rule 8001A(a)(3) was added to address the issue of which court will hear cross-appeals.
- C. The effective date of Rule 8001A(b)(2) will be changed to indicate the date these revisions are adopted.

Rule 8006A:

This is a new rule which clarifies what counsel is required to do in preparing the designation of record and record on appeal.

Rule 8007A:

Rule 8007A(a) and Rule 8007A(b) have both been modified to indicate that the Bankruptcy Court now only needs to transmit one copy of the preliminary and supplemental records to the Bankruptcy Appellate Panel (the prior rule required two copies).

Rule 8008A:

This is a new rule which addresses the issues of electronic filing and noticing.

Rule 8009A:

- A. A sentence was added to the beginning of Rule 8009A(a) regarding transmission of the record and the obligation of counsel to prepare an appendix.
- B. Rule 8009A(b) is a new rule which states the number of appendices to be filed and served on counsel.

Rule 8010A:

This is a new rule which addresses the number of briefs to be filed and served, as well as the length of briefs.

Rule 8014A:

Rule 8014A(a) was modified to indicate parties may recover the cost of preparing three copies of the appendix, instead of four.

Rule 8016A:

- A. The numbering of this rule was changed to accommodate for the addition of rules which address mandates.
- B. Rule 8016A(b) and Rule 8016A(c) were added to explain the Panel's policy on mandates.

Rule 8018A:

The number on this rule was modified from Rule 8018B to Rule 8018A to make it consistent with the numbering used throughout the rules.

Appendix of Forms:

The heading on the form to be used by appellants who wish to file an election to the District Court has been modified to indicate that the form should be filed in the Bankruptcy Court, not with the Bankruptcy Appellate Panel.

LOCAL RULES
OF THE
UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE EIGHTH CIRCUIT

Revised ____/00

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LOCAL RULE 8001A. ELECTION TO HAVE APPEAL HEARD BY THE DISTRICT COURT; APPLICABLE RULES; DISMISSAL

(a) Election to Have Appeal Heard by the District Court. Appellant's separate election to have the appeal heard by the district court shall be filed with the clerk of the bankruptcy court. Any other party's election shall be filed with the clerk of the bankruptcy appellate panel. The filing of any paper by an appellee with the bankruptcy appellate panel, except a Notice of Appearance, waives the time remaining in the thirty-day period to elect to have the appeal heard in district court. Until a timely election to have the appeal heard by the district court is filed, all motions and other papers shall be filed with the clerk.

(1) Timeliness of Election; Clerk's Duties. The election to have the appeal heard by the district court shall substantially follow the form established by Appendix A. If any party makes a timely election to have the appeal heard by the district court, the clerk shall promptly notify the parties and the clerk of the bankruptcy court and shall transmit all papers which have previously been filed with the clerk, as well as a certified copy of the docket, to the clerk of the bankruptcy court who shall process the appeal in accordance with Part VIII of the Federal Rules of Bankruptcy Procedure.

(2) Determination of Timeliness of Election. If any party questions the timeliness of the election, the clerk shall refer the question to a panel.

(3) Cross Appeals. If a party makes a timely election to go to the district court on an appeal, then cross-appeals shall also go to the district court. Likewise, if neither party makes an election to go to the district court on an appeal, they may not elect to go to the district court on a cross-appeal.

(b) Applicable Rules. These Rules are promulgated under the authority of Fed.R.Bankr.P. 8018 and the Judicial Council of the Eighth Circuit's resolution dated April 10, 1996, entitled "Order of the Judicial Council Establishing a Bankruptcy Appellate Panel."

(1) Citation. These Rules will be known as the Local Rules of the United States Bankruptcy Appellate Panel for the Eighth Circuit and cited as: L.R. BAP 8th Cir.

(2) Effective Date. These Rules are effective January 1, 1997, as amended (date new rules are adopted).

(3) Federal Rules of Bankruptcy Procedure 8000 et seq. Part VIII of the Federal Rules of Bankruptcy Procedure and Official Forms (Rule 8001) et seq. apply to proceedings in this court unless suspended as allowed by Fed.R.Bankr.P. 8019.

(4) Other Applicable Rules. When Part VIII of the Federal Rules of Bankruptcy Procedure and these Rules are silent as to a particular matter of practice, the court may order application of the

Federal Rules of Appellate Procedure or the Local Rules of the United States Court of Appeals for the Eighth Circuit.

(c) Dismissal. If an appellant fails to comply with Part VIII of the Federal Rules of Bankruptcy Procedure or these Rules, the clerk shall notify the appellant that the appeal will be dismissed for want of prosecution unless appellant remedies the default within ten (10) days after the clerk issues the notice. If an appellant fails to comply within the ten (10) day period, the clerk shall enter an order dismissing the appeal for want of prosecution and shall issue a certified copy of the order as the mandate to the clerk of the bankruptcy court from which the appeal originated. After the appeal has been dismissed under this Rule, there is no remedy for default except by order of the court. The dismissal of an appeal shall not limit the court's authority to take disciplinary action against defaulting parties or counsel in appropriate cases.

LOCAL RULE 8006A. DESIGNATION OF THE RECORD

The parties shall file a designation of record on appeal pursuant to Fed.R.Bankr.P. 8006; however, they do not need to provide a copy of the items they designated to the clerk of the bankruptcy court. Rather, those items shall be included in counsel's appendix. The appendix shall be filed with the clerk of the Bankruptcy Appellate Panel as required by L.R.BAP 8th Cir. 8009A.

LOCAL RULE 8007A. COMPLETION OF THE TRANSCRIPT AND TRANSMISSION OF RECORD

(a) Transmission of the Preliminary Record. Unless the appellant has filed an election to have the appeal heard by the district court, promptly upon the filing of a notice of appeal, the clerk of the bankruptcy court shall transmit to the clerk of the bankruptcy appellate panel **one** certified copy of the following documents:

- (1) the bankruptcy court docket sheets in the case or proceeding;
- (2) the notice of appeal;
- (3) any motion for extension of time to file the notice of appeal and any dispositive order on the motion;
- (4) the bankruptcy court's final judgment or order from which the appeal is taken, together with any pertinent written findings, conclusions or opinions of the court; and
- (5) all motions to amend or make additional findings of fact, to alter or amend the judgment, for a new trial, or for relief under Fed.R.Bankr.P. 9024, [*see*, Fed.R.Bankr.P. 8002(b)], together with any order disposing of the motions.

(b) Supplemental Record. The clerk of the bankruptcy court shall supplement this preliminary record by transmitting to the clerk of the bankruptcy appellate panel **one** copy of any subsequently filed post-judgment motions together with **one** copy of the dispositive order and the related docket entries.

(c) Transmission of the Record. Transmission of the preliminary record and any supplemental record to the clerk of the bankruptcy appellate panel constitutes transmission of the record on appeal for the purposes of Fed.R.Bankr.P. 8007(b).

(d) Docketing the Appeal. Upon receipt of the preliminary record, the clerk of the bankruptcy appellate panel shall docket the appeal and establish a schedule for the designation of the record, the completion of the transcript and the filing of briefs. The clerk shall notify all parties to the appeal and the clerk of the bankruptcy court that the matter has been docketed and a briefing schedule established. At the time of the docketing the clerk shall assign the case a unique, permanent bankruptcy appellate panel case number.

(e) Duty of the court reporter to prepare and file the transcript. The acknowledgment of a transcript request prepared by the reporter, electronic court recording operator or transcribing service shall be sent to both the clerk of the bankruptcy court and the clerk of the bankruptcy appellate panel. The

reporter, operator, or transcriber shall notify the clerk of the bankruptcy appellate panel when the transcript is filed. A reporter's or transcriber's motion for an extension of time to file the transcript shall be filed with the clerk of the bankruptcy panel.

(f) Duty of the bankruptcy court clerk to transmit the transcript. Upon the filing of the transcript, the clerk of the bankruptcy court shall transmit the transcript to the clerk of the bankruptcy appellate panel.

LOCAL RULE 8008A. ELECTRONIC FILING AND NOTICING

(a) Electronic Filing. In cases or classes of cases as the clerk may select, the clerk is authorized to allow or to require any moving party to file a required document electronically. The electronic image of the document will constitute the original document for all court purposes. Filing is complete when the document is received in the clerk's database.

To each document filed electronically, the filer must add a certificate verifying that the original was signed by the attorney or party shown as the filer. The original signed document must be maintained by the filer for a period not less than the maximum allowable time to complete the appellate process. Upon request, the original document must be provided to other parties or to the court.

The clerk may allow a clerk of the bankruptcy court to transmit the notice of appeal and other required docketing documents electronically. Receipt of these documents is complete for filing purposes when they are received the clerk's database.

(b) Electronic Noticing. In cases or classes of cases as the clerk may select, the clerk is authorized to serve all papers on counsel of record electronically. Counsel who agree to accept electronic notice must agree that the electronic notice will be the only notice provided by the clerk.

LOCAL RULE 8009A. APPENDIX

(a) Requirements. Transmission of the preliminary record pursuant to L.R.BAP 8th Cir. 8007A does not relieve counsel of the obligation to prepare a complete appendix as set forth in Fed.R.Bankr.P. 8009. In addition to the requirements of Fed.R.Bankr.P. 8009, the appendix shall include:

(1) Certification of Interested Parties. A certification of interested parties shall include a list of persons, associations of persons, firms, partnerships and corporations which may have an interest in the outcome of the case in substantially the following form:

NUMBER AND TITLE OF THE APPEAL

Certification Required By Fed.R.Bankr.P. 8009(b): The undersigned, counsel of record for _____ certifies that the following listed party (or parties) has (have) an interest in the outcome of this appeal. These representations are made to enable the judges of the panel to evaluate possible disqualification or recusal.

(Here list the names of all such parties _____ and identify their connection and interest _____ with the appeal.)

(Signature) _____

Attorney of record for:

(2) Certification of Related Cases. A Certification of Related Cases which shall include a statement of all known related cases before a United States Court of Appeals, a United States District Court, a United States Bankruptcy Court, or a United States Bankruptcy Appellate Panel. A related case is one which involves substantially the same litigants, or one which involves substantially the same factual pattern or legal issue.

(b) Form and Number. The appendix shall be bound separately from the brief and shall contain an index of its contents. Three copies shall be filed; one copy shall be served on counsel for each party separately represented.

Rule 8010A. BRIEFS

(a) Number of Briefs. An original and five copies of each brief shall be filed with the clerk. One copy of each brief shall be served on counsel for each party separately represented.

(b) Length of Briefs. Principal briefs shall not exceed 25 pages and reply briefs shall not exceed 15 pages, exclusive of pages containing the table of contents, tables of citations, statement of the basis of appellate jurisdiction, statement of the issues and standard of review.

LOCAL RULE 8011A. MOTIONS

(a) Orders the Clerk May Grant. The clerk has discretion to enter orders on behalf of the court in procedural matters, including, but not limited to:

- (1) applications for leave to file over length briefs and addenda;
- (2) extensions of time to file briefs, transcripts and appendices;
- (3) extensions of time to designate the record;
- (4) corrections to briefs, pleadings, or the record;
- (5) supplementation of the record on appeal;
- (6) incorporation of the record from prior appeals;
- (7) consolidation of appeals;
- (8) substitution of parties;
- (9) motions to appear as amicus curiae;
- (10) requests by amicus curiae counsel to participate in oral argument by sharing time with other counsel;
- (11) advancement or continuance of cases;
- (12) withdrawal of counsel;
- (13) extensions of time to file motions for rehearing, bills of costs and motions for attorneys' fees;
- (14) taxation of costs.

If any party seeks reconsideration of an order entered under this section, the clerk shall submit the matter for ruling by a three-judge panel.

(b) Motions to Dismiss. A party may move to dismiss an appeal for failure to comply with the Federal Rules of Bankruptcy Procedure or these Local Rules or any other Rule made applicable to the appeal.

(c) Motion for Extension of Time for Filing Brief. A motion for extension of time for filing a brief shall:

- (1) be made within the time limit established by the court's briefing schedule for the filing of such brief and shall be accompanied by proof of service;
- (2) be supported by a declaration stating the time when the brief is due; how many extensions of time, if any, have been granted and when the brief was first due; and whether any previous requests for extensions of time have been denied or denied in part;
- (3) briefly recite the reasons why such an extension is necessary and the amount of time requested. Any motion for an extension of time to file a brief on the ground that the transcript is unavailable must affirmatively show that the transcript was timely ordered and paid for or must state why the transcript was not so ordered.

Pursuant to L.R. BAP 8th Cir. 8011A(a)(2), the clerk is authorized to rule on all motions for extension of time to file a brief. Motions for extension of time will be processed promptly and without awaiting responses from opposing counsel. Any objection received after an order has been entered on the motion may be treated as a request for reconsideration.

(d) Emergency Motions. If a movant certifies that to avoid immediate irreparable harm, relief is needed on an emergency basis, the motion shall be governed by Fed.R.Bankr.P. 8011(d) and the following requirements:

(1) Any motion under this Rule shall have a cover page bearing the legend "Emergency Motion" and the caption of the case.

(2) A certificate of counsel for the movant shall follow the cover page and shall contain:

- (A) Facts showing the existence and nature of the claimed emergency;
- (B) The telephone numbers and office addresses of moving and opposing counsel and parties who are not represented by counsel;
- (C) When and how the other parties were notified and whether they have been served; or if not notified and served, why that was not done;

- (D) If the relief sought in the motion was available in the bankruptcy court, a statement as to whether all grounds advanced in support of the motion brought before the panel were submitted to the bankruptcy court, and, if not, the reasons why.

(3) An appendix to the Emergency Motion shall be served and filed with the motions and shall include the following:

- (A) A copy of the Notice of Appeal (if applicable);
- (B) A copy of the judgment, order, or decree from which the appeal is taken;
- (C) A copy of the bankruptcy court's order denying the movant emergency relief.

(4) Emergency motions and responses shall be filed with the clerk in St. Louis, Missouri. The movant must use every practicable effort to notify and serve opposing counsel, using the quickest method available. The burden is on the movant to provide to the clerk and to opposing counsel copies of all documents relevant to the motion

(e) Reconsideration of Orders. Any party adversely affected by an order entered under the provisions of this Rule may file a motion to reconsider, vacate or modify the order within 10 days after its entry. The motion shall be referred to a three-judge panel.

LOCAL RULE 8014A. COSTS

(a) Taxation of Reproduction Costs. Unless a party was directed to file a greater number of copies, a party entitled to recover costs may recover the cost of preparing five copies of the brief, plus two copies for each party separately represented; the clerk shall also tax the costs of preparing an equal number of separate addenda. A party entitled to recover costs may recover the cost of preparing three copies of the appendix, plus one copy for each party separately represented.

(b) Allowed Costs. The clerk shall tax reproduction costs, regardless of reproduction method, at the following rates:

Reproduction per page per copy	\$.15
Binding if required per brief, separate addendum or appendix	\$5.00
Cover per brief, separate addendum or appendix	\$2.00
Sales tax (if any)	at the applicable rate

The clerk shall not allow taxation of other costs associated with the preparation of the brief or appendix. Parties cannot recover the costs of overnight or special delivery services.

(c) Time for Filing. The prevailing party must file a bill of costs within 10 days after entry of judgment. Untimely bills will be denied unless a motion showing good cause is filed with the bill. The losing party must file any objections to the bill of costs within 7 days after being served. The clerk may, upon a showing of good cause, grant a party an additional 7 days for filing either the bill of costs or the objections.

(d) Support for Bill of Costs. The bill of costs must be itemized. Any receipts must be attached as exhibits to the bill of costs.

LOCAL RULE 8015A. MOTION FOR REHEARING

(a) Time for Filing. Unless the time is shortened or extended by order of the court, a motion for rehearing must be filed within 10 days after entry of judgment.

(b) Responses. Unless the court requests, no response to a motion for rehearing shall be filed. Ordinarily, a rehearing will not be granted in the absence of such a request for response.

(c) Court Action if Granted. If a motion for rehearing is granted, the court may make a final disposition without reargument, may restore the case to the calendar for reargument or resubmission, or may issue any other appropriate order.

(d) Form of Motion and Length. Unless an order granting permission to file an over-length motion for rehearing is granted, the motion is limited to 15 pages. The motion may not incorporate briefs filed in this or another court.

(e) Extensions of Time. Upon a showing of good cause, the clerk may grant a party an additional 10 days to file either a motion for rehearing or a required response. The motion for the extension of time must be filed within the time allowed for the filing of the motion for rehearing or response. Motions for extension of time received in the clerk's office after the time for filing a motion for rehearing or response has expired may be denied as untimely.

**LOCAL RULE 8016A. DUTIES OF THE CLERK OF THE BANKRUPTCY
APPELLATE PANEL**

(a) Clerk of the Bankruptcy Appellate Panel.

(1) Designation Of Clerk. The Clerk of the United States Court of Appeals for the Eighth Circuit shall serve as the Clerk of the United States Bankruptcy Appellate Panel for the Eighth Circuit. Unless it is inconsistent with the context, the word clerk in these rules means the Clerk of the United States Bankruptcy Appellate Panel for the Eighth Circuit.

(2) Communications to the Bankruptcy Appellate Panel. All communications to the Bankruptcy Appellate Panel shall be addressed to:

Clerk of the Court
United States Bankruptcy Appellate Panel
for the Eighth Circuit
U.S. Court and Custom House
1114 Market Street, Room 511
St. Louis, Missouri 63101

(b) Issuance of Mandate. The clerk shall issue the mandate of the court seven days after the expiration of the time for filing a motion for rehearing. A certified copy of the judgment and a copy of the opinion of the court, if any, shall constitute the mandate. The mandate is effective when issued.

(c) Stay of Mandate. Following are conditions upon which the court's mandate may be stayed:

(1) On Motion for Rehearing. The timely filing of a motion for rehearing will stay the mandate until disposition of the motion unless otherwise ordered by the court. If the motion is denied, the mandate shall issue seven days after entry of the order denying the motion.

(2) Pending Appeal. A party who files a motion requesting a stay of mandate pending appeal to the United States Court of Appeals for the Eighth Circuit must show that the appeal presents a substantial question and that there is good cause for a stay. The stay cannot exceed 30 days unless the period is extended for cause shown or unless a notice of appeal is filed during the period of the stay, in which case the stay will continue until final disposition by the Court of Appeals. The clerk shall issue the mandate immediately when a copy of an order of the Court of Appeals is entered disposing of the appeal. The court may require a bond or other security as a condition to the grant or continuance of a stay of the mandate.

LOCAL RULE 8018A. ADMITTING AND DISCIPLINING ATTORNEYS

(a) Admission. Any attorney admitted to practice before the Court of Appeals for the Eighth Circuit, and in good standing before that court, may practice before the United States Bankruptcy Appellate Panel for the Eighth Circuit. No separate admission fee shall be required. An attorney who is not admitted may file a written pleading but may not appear to present oral argument.

(b) Discipline. The court may take any appropriate disciplinary action against an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these Rules or any court Rule. Counsel will be afforded reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing. The Bankruptcy Appellate Panel may direct the clerk to refer a disciplinary matter to the United States Court of Appeals for the Eighth Circuit.

UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE EIGHTH CIRCUIT

In re:)
)
DEBTOR,) Case No.
)
Debtor.) Chapter

APPELLEE'S ELECTION THAT APPEAL BE HEARD BY THE
UNITED STATES DISTRICT COURT

Appellee, _____, hereby elects, pursuant to 28 U.S.C. § 158 (c)(1)(B) and L.R.
BAP 8th Cir. 8001A(a)(1), to have this appeal heard by the United States District Court for the _____
___ District of _____. The notice of appeal was served on the undersigned on _____.

Attorney for Appellee
Address
City, State, Zip

FOR THE DISTRICT OF _____

In re: _____)
 _____)
 DEBTOR, _____) Case No. _____
 _____)
 Debtor. _____) Chapter _____

APPELLANT'S ELECTION THAT APPEAL BE HEARD BY THE
UNITED STATES DISTRICT COURT

Appellant, _____, hereby elects, pursuant to 28 U.S.C. §158(c)(1)(A), to have this appeal heard by the United States District Court for the _____ District of _____.

Attorney for Appellant
Address
City, State, Zip